

**PLACER COUNTY SUPERIOR COURT
CIVIL LAW AND MOTION TENTATIVE RULINGS
TUESDAY, MARCH 1, 2022**

These are the tentative rulings for civil law and motion matters set at **8:30 a.m. on Tuesday, March 1, 2022**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Monday, February 28, 2022**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

Except as otherwise noted, these tentative rulings are issued by **COMMISSIONER TRISHA J. HIRASHIMA** and if oral argument is requested, it will be heard in **Department 40**, located at 10820 Justice Center Drive, Roseville, California.

<p>PLEASE NOTE: TELEPHONIC APPEARANCE IS STRONGLY ENCOURAGED FOR ALL CIVIL LAW AND MOTION MATTERS. (Emergency Local Rule 10.28; see also Local Rule 20.8.) More information is available at the court's website: www.placer.courts.ca.gov.</p>

1. M-CV-0073073 Discover Bank vs. Portice, Jayden C.

Motion to Enter Judgment

Plaintiff's motion to enter judgment is denied without prejudice. The court previously continued the hearing on this motion, and directed plaintiff to serve notice of the continued hearing date on defendant at his last known address. It appears that notice of the continued hearing was instead sent to a prior attorney of plaintiff.

2. M-CV-0080531 Staricco, Jack vs. Fuchs, Tyler W.

The demurrer to complaint is **continued to March 8, 2022, at 8:30 a.m. in Department 40**. Defendant Tyler Fuchs failed to file the demurrer with the court, although a proof of service of the demurrer was filed on January 25, 2022, and plaintiff has filed an opposition. Defendant shall file the demurrer no later than close of business on March 1, 2022. No further briefing shall be permitted.

3. **M-CV-0080773 Auburn Mobile Home Village, LLC vs. Pereira, Stephen J.**

Petition for Judgment of Abandonment

Petitioner's petition for judgment of abandonment is denied without prejudice. There is no proof of service in the court's file demonstrating service of the petition in compliance with Civil Code section 798.61(c)(1).

4. **S-CV-0040875 Hill, Matthew, et al vs. Chamberlin, Mark Patrick, et al**

Order to Show Cause re Status of Mediation and Arbitration

Appearance required on March 1, 2022, at 8:30 a.m. in Department 40.

5. **S-CV-0041667 Smart, Nicole vs. The Cheesecake Factory Restaurants, Inc.**

Motion for Court Approval of PAGA Settlement

Plaintiff's unopposed motion for court approval of PAGA settlement is granted as prayed. The court has carefully reviewed the moving papers along with the entirety of the court file and determines that the settlement is genuine, meaningful, and consistent with the underlying purposes of the PAGA-related statute. Labor Code § 2699(l); *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110. The court also determines the settlement appears fundamentally fair, reasonable, and adequate. *Id.* The court incorporates by reference the findings and orders outlined in the proposed order granting approval of PAGA settlement and judgment.

6. **S-CV-0042659 Faulkner, Mercedes, et al vs. Brazil, Anastasia, et al**

Petition for Approval of Compromise of Claim

The petition for approval of compromise of claim of a person with a disability is granted as prayed. The court has carefully considered the petition and supporting attachments, as well as the supplemental brief and declaration of counsel filed February 18, 2022, and finds that the settlement is the best interest of the claimant. The court authorizes the revised Stephen Googooian Special Needs Trust attached as Exhibit 1 to petitioner's supplemental brief filed February 18, 2022, and authorizes petitioner to execute the Special Needs Trust. If oral argument is requested, appearance of the claimant is excused.

7. **S-CV-0043231 ECO Bedroom Solutions, LLC vs. Alvis, Brandy**

Motion for Leave to File First Amended Complaint

Plaintiff's motion for leave to file first amended complaint is granted. Plaintiff shall file its first amended complaint on or before March 18, 2022.

On its own motion, the court drops the Order to Show Cause re Default Judgment hearing set March 28, 2022. A case management conference is set May 9, 2022, at 2:00 p.m. in Department 40.

8. S-CV-0043653 Jordan, Van vs. James, Roy, et al

Motion to Compel Further Responses and Production to Demand for Inspection and Production of Documents, Set Two

Plaintiff's request for judicial notice is granted.

Defendant argues that plaintiff has waived the attorney-client privilege and attorney work product protection with respect to the issue of settlement and plaintiff's counsel's settlement authority as it relates to the current action. At issue is a November 27, 2019, letter sent by plaintiff's counsel to defense counsel, which defendant argues was a valid settlement offer to settle plaintiff's claims against defendant for policy limits. Defendant further argues that the offer was accepted, and that a binding settlement agreement was entered into. This claim is the basis for defendant's second amended cross-complaint, which seeks specific performance of the alleged settlement agreement.

Defendant moved for summary judgment as to his claim for specific performance. In opposition to the motion, plaintiff submitted evidence to support his contention that even if the November 27, 2019, letter was a valid offer, plaintiff had not actually authorized his attorney to settle his personal injury claim for defendant's policy limits of \$100,000. Specifically, plaintiff stated:

9. I did not consent to settle my bodily injury claim against Mr. Roy James for his GEICO policy limits of \$100,000.00.

10. I did not give authority to my counsel to settle my bodily injury claim against Mr. James' for his GEICO policy limits of \$100,000.00.

...

13. I did not authorize my counsel to accept payment of \$100,000.00 on my behalf to settle my bodily injury claim against Mr. Roy James.

(Declaration of Van Jordan in Support of Opposition to Motion for Summary Judgment, ¶¶ 9, 10, 13.)

An exception to the attorney-client privilege may be found where the client has placed the content of privileged communications at issue in the case. *See Steiny & Co. v. Cal. Electric Supply Co.* (2000) 79 Cal.App.4th 285, 291-292. However, the scope of any waiver of the attorney-client privilege must be narrowly construed. *See Manuela v. Superior Court* (2009) 177 Cal.App.4th 1139, 1148. The court finds that plaintiff has waived the attorney-client privilege with respect to communications with counsel made prior to transmission of the November 27, 2019, letter, by which plaintiff consented or authorized counsel to settle his bodily injury claim against defendant for policy limits, or

withheld consent or authorization for settlement of his bodily injury claim against defendant for policy limits.

Defendant does not establish applicability of the crime-fraud exception to the attorney-client privilege. Further, although defendant discusses dismissal of the action in his moving papers, the notice of motion does not request dismissal, and to the extent the motion can be construed as seeking dismissal, any such request is denied.

The motion is granted in part, and denied in part. The motion is granted as to Request Nos. 19, 20 and 27. However, the requests shall be limited to seek only documents relating to communications and/or agreements which predate transmission of the November 27, 2019, letter. The motion is otherwise denied.

Motion to Compel Further Responses to Special Interrogatories, Set Two

Plaintiff's request for judicial notice is granted.

Defendant argues that plaintiff has waived the attorney-client privilege and attorney work product protection with respect to the issue of settlement and plaintiff's counsel's settlement authority as it relates to the current action. At issue is a November 27, 2019, letter sent by plaintiff's counsel to defense counsel, which defendant argues was a valid settlement offer to settle plaintiff's claims against defendant for policy limits. Defendant further argues that the offer was accepted, and that a binding settlement agreement was entered into. This claim is the basis for defendant's second amended cross-complaint, which seeks specific performance of the alleged settlement agreement.

Defendant moved for summary judgment as to his claim for specific performance. In opposition to the motion, plaintiff submitted evidence to support his contention that even if the November 27, 2019, letter was a valid offer, plaintiff had not actually authorized his attorney to settle his personal injury claim for defendant's policy limits of \$100,000. Specifically, plaintiff stated:

9. I did not consent to settle my bodily injury claim against Mr. Roy James for his GEICO policy limits of \$100,000.00.

10. I did not give authority to my counsel to settle my bodily injury claim against Mr. James' for his GEICO policy limits of \$100,000.00.

...

13. I did not authorize my counsel to accept payment of \$100,000.00 on my behalf to settle my bodily injury claim against Mr. Roy James.

(Declaration of Van Jordan in Support of Opposition to Motion for Summary Judgment, ¶¶ 9, 10, 13.)

An exception to the attorney-client privilege may be found where the client has placed the content of privileged communications at issue in the case. *See Steiny & Co. v. Cal. Electric Supply Co.* (2000) 79 Cal.App.4th 285, 291-292. However, the scope of any

waiver of the attorney-client privilege must be narrowly construed. *See Manuela v. Superior Court* (2009) 177 Cal.App.4th 1139, 1148. The court finds that plaintiff has waived the attorney-client privilege with respect to communications with counsel made prior to transmission of the November 27, 2019, letter, by which plaintiff consented or authorized counsel to settle his bodily injury claim against defendant for policy limits, or withheld consent or authorization for settlement of his bodily injury claim against defendant for policy limits.

Defendant does not establish applicability of the crime-fraud exception to the attorney-client privilege. Further, although defendant discusses dismissal of the action in his moving papers, the notice of motion does not request dismissal, and to the extent the motion can be construed as seeking dismissal, any such request is denied.

The motion is granted in part, and denied in part. The motion is granted as to Special Interrogatory Nos. 22 and 24. The motion is also granted as to Special Interrogatory Nos. 20, 23, and 31, but the interrogatories shall be limited to seek only information which predates transmission of the November 27, 2019, letter. The motion is otherwise denied.

Motion to Compel Further Responses to Request for Admissions, Set Two

Plaintiff's request for judicial notice is granted.

Defendant argues that plaintiff has waived the attorney-client privilege and attorney work product protection with respect to the issue of settlement and plaintiff's counsel's settlement authority as it relates to the current action. At issue is a November 27, 2019, letter sent by plaintiff's counsel to defense counsel, which defendant argues was a valid settlement offer to settle plaintiff's claims against defendant for policy limits. Defendant further argues that the offer was accepted, and that a binding settlement agreement was entered into. This claim is the basis for defendant's second amended cross-complaint, which seeks specific performance of the alleged settlement agreement.

Defendant moved for summary judgment as to his claim for specific performance. In opposition to the motion, plaintiff submitted evidence to support his contention that even if the November 27, 2019, letter was a valid offer, plaintiff had not actually authorized his attorney to settle his personal injury claim for defendant's policy limits of \$100,000. Specifically, plaintiff stated:

9. I did not consent to settle my bodily injury claim against Mr. Roy James for his GEICO policy limits of \$100,000.00.

10. I did not give authority to my counsel to settle my bodily injury claim against Mr. James' for his GEICO policy limits of \$100,000.00.

...

13. I did not authorize my counsel to accept payment of \$100,000.00 on my behalf to settle my bodily injury claim against Mr. Roy James.

(Declaration of Van Jordan in Support of Opposition to Motion for Summary Judgment, ¶¶ 9, 10, 13.)

An exception to the attorney-client privilege may be found where the client has placed the content of privileged communications at issue in the case. *See Steiny & Co. v. Cal. Electric Supply Co.* (2000) 79 Cal.App.4th 285, 291-292. However, the scope of any waiver of the attorney-client privilege must be narrowly construed. *See Manuela v. Superior Court* (2009) 177 Cal.App.4th 1139, 1148. The court finds that plaintiff has waived the attorney-client privilege with respect to communications with counsel made prior to transmission of the November 27, 2019, letter, by which plaintiff consented or authorized counsel to settle his bodily injury claim against defendant for policy limits, or withheld consent or authorization for settlement of his bodily injury claim against defendant for policy limits.

Defendant does not establish applicability of the crime-fraud exception to the attorney-client privilege. Further, although defendant discusses dismissal of the action in his moving papers, the notice of motion does not request dismissal, and to the extent the motion can be construed as seeking dismissal, any such request is denied.

Based on the foregoing, the motion is granted in its entirety.

9. S-CV-0044123 Rizzonelli, Roxanne, et al vs. Pride Industries, Inc., et al

Motion for Leave to File Second Amended Cross-Complaint

Defendant and cross-complainant Pride Industries' request for judicial notice is granted. The court takes judicial notice of the existence of the referenced documents, but not the truth of factual matters stated therein.

Defendant and cross-complainant Pride Industries' motion for leave to file second amended cross-complaint is granted. The court may permit a party to amend a pleading in the furtherance of justice and on such terms as may be just. Code Civ. Proc. §§ 473(a)(1), 576. Leave to amend is generally exercised liberally so long as there is no showing of prejudice to the opposing party. *Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428; *Douglas v. Superior Court* (1989) 215 Cal.App.3d 155, 158.

Opposing parties fail to establish sufficient prejudice to justify denial of the motion. The court declines to consider the validity of the proposed amended pleadings in determining whether to grant leave, as grounds for demurrer are premature at this stage. *See Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.

Pride Industries shall file and serve the second amended cross-complaint on or before March 18, 2022.

10. S-CV-0045659 Larsen, Sherry vs. Placer Valley Sports Complex

Defendant's motion for summary adjudication is continued to March 15, 2022, at 8:30 a.m. in Department 40.

11. S-CV-0045759 Austin, Janet, et al vs. Rocklin Unified School District, et al

Defendants' motion to compel discovery responses was continued by the moving party to May 31, 2022, at 8:30 a.m. in Department 40.

12. S-CV-0045837 Onyems, Chizoma vs. Select Portfolio Services, Inc.

Motion to Compel Responses to Discovery

Plaintiff's motion to compel further responses to special interrogatories is denied. The motion is not supported by declaration, but appears to seek orders compelling two individuals who are not named as defendants in this action, to respond to special interrogatories and requests for admission. Plaintiff does not demonstrate that defendant has failed to serve timely responses to duly served discovery requests. To the extent plaintiff's amended notice of motion, which asks for responses from "SPS Supervising Manager Mr. Andrew", can be construed as seeking discovery responses from defendant Select Portfolio Services, Inc., defendant notes that the subject discovery requests were served on the same day that the amended notice of motion was filed, and that responses are not yet due.

The court shall impose a monetary sanction against a party who unsuccessfully makes a motion to compel responses to interrogatories, unless it finds that the party acted with substantial justification or that other circumstances make the imposition of the sanction unjust. The court finds that plaintiff did not act with substantial justification in filing his motion to compel, and amended motion to compel, and awards sanctions against plaintiff in the amount of \$600.

13. S-CV-0047017 Parrillo, Barbara vs. AWI Management Corporation

Motion to Compel Deposition

Plaintiff's motion to compel the deposition of defendant AWI Management Corporation is granted. Plaintiff duly served a notice of deposition for defendant AWI Management Corporation on or about November 23, 2021. Defendant served timely objections on the grounds that counsel was unavailable on the date noticed, and on the grounds that counsel was unwilling to appear for an in-person deposition. Plaintiff's counsel requested alternative dates for an in-person deposition "in the next month or two." Defense counsel responded, "we can wait a few months and see what things look like", but declined at that time to provide alternative dates for the deposition. The court notes that in conjunction with the filing of its opposition to the present motion, defense counsel has now offered alternative dates for the deposition.

Defendant shall appear for the deposition of its person most qualified within 30 days. The parties are directed to meet and confer regarding the setting of the deposition on a mutually convenient date. The parties' requests for sanctions are denied.

14. S-CV-0047287 K.L. vs. Pathak, Ranganath, M.D.

Motion to Stay Discovery

Defendant Ranganath Pathak, M.D. ("defendant") moves for a stay of any discovery directed to him in the current action, for a period of three years.

Defendant credibly asserts that he is under criminal investigation by the Roseville Police Department based on the same conduct underlying the current civil action. A defendant in related criminal and civil actions may, under certain circumstances, obtain a stay of discovery in the civil action while the criminal action is pending. *Avant! Corp. v. Superior Court* (2000) 79 Cal.App.4th 876, 885. In determining whether to grant a defendant's request to stay discovery, the court considers the extent to which the defendant's Fifth Amendment rights are implicated; the interests of the plaintiff in proceeding expeditiously and the potential prejudice of a delay; the burden the proceedings may impose on the defendants; the convenience of the court to manage cases and efficient use of judicial resources; the interests of others not involved in the civil litigation; and the interests of the public. *Id.* at 887; *Keating v. Office of Thrift Supervision* (9th Cir. 1995) 45 F.3d 322, 324-325.

The court has carefully considered the *Keating* factors, and finds that a stay is warranted in this case. Defendant's Fifth Amendment rights are clearly implicated, as the current civil action overlaps with an ongoing criminal investigation arising from the same alleged conduct. Plaintiff does raise concerns regarding her own health status, but does not submit any evidence which supports the contention that her medical condition is such that her survival to the conclusion of the current case is in doubt. With respect to the remaining *Keating* factors, the court finds that the proceedings may impose a substantial burden on defendant in light of the ongoing criminal investigation and the implication of choosing whether or not to assert his Fifth Amendment rights in this proceeding. A stay would further the court's interest in an efficient use of judicial resources. Finally, plaintiff does not establish that the interests of third parties or the public would be prejudiced by a stay.

Defendant's motion is granted in part. The court grants a stay of discovery directed at the moving defendant for a period of one year. The stay will terminate by its own terms on March 1, 2023. Defendant may seek a continuation of the stay prior to its expiration through noticed motion. Conversely, plaintiff may seek early termination of the stay through noticed motion if circumstances warrant such action.

15. S-CV-0047445 Sunbelt Rentals, Inc. vs. Prime Tech Construction LLC et al

Motion to Dismiss

Defendant's request for judicial notice is denied. Plaintiff's objection to defendant's declaration and request for judicial notice is overruled.

Defendant Chizoma Onyems' motion to dismiss is denied. Defendant sets forth no appropriate legal authority for the request for dismissal of the action. To the extent defendant intends to demur to the complaint, the motion is procedurally defective and refers to matters beyond the four corners of the complaint, which the court may not consider in ruling on a demurrer.

Motion to Strike

Plaintiff's motion to strike defendant's motion to dismiss is denied as moot.

16. S-CV-0047651 Im, Patrick, D.D.S. vs. Adventist Health Cal. Med. Group, Inc.

Defendant's motion to compel arbitration is continued to March 29, 2022, at 8:30 a.m. in Department 40.

17. S-CV-0047809 Conrad, Ethan vs. Ghiselin, Douglas, et al

Application for Right to Attach Order and Issuance of Writ of Attachment

Plaintiff's application for right to attach order and issuance of writ of attachment is denied.

An attachment may be issued if the claim sued upon is based upon a contract, for a fixed or readily ascertainable amount not less than \$500, that is unsecured or secured by personal property, and that is a commercial claim. Code Civ. Proc. § 483.010. Damages must be measurable by reference to the contract itself, and the basis for computing damages must be reasonable and certain. *CIT Group/Equipment Financing, Inc. v. Super DVD, Inc.* (2004) 115 Cal.App.4th 537, 541.

In this case, defendant fails to establish that the claim sued on is a commercial claim. Against an individual, attachment lies only on a claim that arises "out of the conduct by the defendant of a trade, business or profession." Code Civ. Proc. § 483.010(c). "[A] retired person, with no financial stake in the success of the primary obligor, cannot properly be held engaged in business solely by virtue of an isolated instance in which he guarantees a commercial obligation out of friendship and without compensation." *Advance Transformer Co. v. Superior Court* (1974) 44 Cal.App.3d 127, 144. Defendant is the father of the tenant under the Lease, and asserts that he agreed to sign the Guaranty without any compensation, and had no involvement in tenant's business. Defendant declares that he is not in the business of guaranteeing leases, and that the only lease

guaranty he has ever signed is the lease guaranty at issue in this action. (Declaration of Douglas Guiselin, ¶¶ 2, 3, 7, 8.)

Further, defendant fails to establish the probable validity of the claim. Plaintiff must demonstrate that it is more likely than not that plaintiff will obtain a judgment against defendant on the claim. Code Civ. Proc. § 481.190. The original lease was entered into by landlord Eureka Development Company, plaintiff's predecessor-in-interest, and Bill and Claudia Thomas dba Sharp Bicycles. The "Premises" leased by the tenants was located at 2340 Sunset Boulevard, Suites 160 and 170, Rocklin, California. These same parties thereafter executed a first amendment to the lease and a second amendment to the lease, changing the lease commencement and expiration dates and the rent schedule.

In or about February 2015, a third amendment to the lease was executed. The third amendment transferred the tenancy to Jeff Ghiselin, and confirmed a lease expiration date of August 31, 2017. The third amendment was also executed by defendant Douglas Ghiselin as guarantor, with defendant also executing a separate guaranty. The guaranty states that the landlord may "at any time during the Lease Term, without notice to or assent of any Guarantor and without in any way releasing, affecting or impairing any of Guarantor's obligations or liabilities under this Guaranty: (a) alter, modify or amend the Lease by agreement or course of conduct, (b) grant extensions or renewals of the Lease..." (Guaranty, ¶2.)

On September 15, 2017, Jeff Ghiselin signed a document titled "Fourth Amendment to Stanford Ranch Plaza Standard Form Shopping Center Lease Dated August 30, 2017 by and Between Eureka Development Company, LLC (Landlord) and Jeff Ghiselin (Tenant)". The fourth amendment was countersigned by Eureka Development Company, LLC, on October 18, 2017. The fourth amendment states that "[e]ffective September 1, 2017, Tenant will commence paying rent & NNN charges for the premises known as 2340 Sunset Boulevard, Suite 150 Rocklin CA 95756, which measures 1,498 square feet, per the rent schedule detailed below." The fourth amendment further states that the tenant "will need to vacate the premises known as 2340 Sunset Boulevard, Suite 170 Rocklin, CA 95765, which measures 2,429 square feet, no later than January 10, 2018." Finally, the fourth amendment states that "Douglas Guiselin to remain Lease Guarantor thru August 31, 2022, per Exhibit G Guarantee of the Third Lease Amendment."

Defendant did not sign the Fourth Amendment, and denies knowledge of it. Defendant argues that the lease agreement for which he signed the guaranty expired on its own terms, and a new lease agreement was later entered into for a different "Premises", to which the Guaranty does not apply.

The court finds that plaintiff has not met his burden of demonstrating the probable validity of the claim. To do so, plaintiff must show that the guaranty signed by defendant attaches to the fourth amendment. But it has not been established that the fourth amendment, despite its label, can be considered an amendment to the lease agreement, continuing to bind defendant without notice. The fourth amendment states a new five year term, in a new and much smaller space. The original lease agreement does contain

provisions regarding the landlord's right to relocate premises. (Article 35.) Plaintiff's application does not demonstrate, however, that the landlord exercised its right to relocate the Premises under Article 35 of the lease agreement, including performance of the several requirements also stated in the lease agreement. (Articles 35.1-35.8.) The lease agreement also includes an option to renew or extend "under the same terms, covenants, conditions, and subject to the same exceptions or reservations herein contained." (Article 40). Plaintiff has not established that moving into a new space can constitute renewal or extension of the prior lease agreement "under the same terms, covenants [and] conditions". Finally, defendant does not show that, even if it can be considered an amendment, extension or renewal of the lease agreement, the amendment, extension or renewal was granted "at any time during the Lease Term", given that the Fourth Amendment was signed by the prior landlord over a month after the lease term expired. Based on the foregoing, the application is denied.

18. S-CV-0047911 Schultz, Bernadine vs. Rowland, Craig

The petition to confirm and correct arbitration award is denied without prejudice, as there is no proof of service in the court's file demonstrating proper and timely service of the petition and notice of hearing on respondent.

19. S-CV-0047917 In the Matter of - Rousch, Wendy

Petition for Approval of Compromise of Claim of Minor

The petition for approval of compromise of claim of minor is granted as prayed. If oral argument is requested, appearance of the minor claimant is excused.

20. S-CV-0047918 In the Matter of Rousch, Wendy

The scheduled hearing is dropped as no moving papers were filed with the court.

21. S-CV-0047919 In Re the Petition of Roseman, Vonetta

Petition for Approval of Compromise of Claim of Minor

The petition is denied without prejudice. Petitioner requests that the balance of the proceeds of the settlement be deposited in a blocked account. However, the financial institution identified by petitioner is not a financial institution *in this state* as required by Probate Code section 3602(c)(1). If oral argument is requested, appearance of the minor claimant is excused.